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August 26, 2013

By Fax Number 212.805.7986The Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/24/13***Docket & File*Re: *United States v. Martoma*, 12 Cr. 973 (PGG)

Dear Judge Gardephe:

We respectfully submit this letter to the Court on behalf of Sidney Gilman, M.D., third-party intervenor, to provide the information that the Court requested at the conference on August 23rd, in connection with Dr. Gilman's motion for a protective order for privileged and protected communications.

At the conference, the Court inquired as to an appropriate time period for an Order directing the University of Michigan (the University) to produce materials relating to its policies regarding the University's electronic system (including email and other electronic records) and Dr. Gilman's knowledge of the policies and use of email on the University's electronic system. The Court also inquired as to the earliest date of any document on the University of Michigan's system over which Dr. Gilman is asserting privilege.

We are continuing but nearing the conclusion of our privilege review of University of Michigan documents that an electronic vendor has identified to us as potentially privileged, based on running search terms that were provided. Identifying the date that a document was created or communicated sometimes has been problematic. For example, two undated documents that reflect patient information communicated by a doctor appear from their content to have been created in 2007 or 2008 (or later), with the most recent modified metadata date of December 26, 2007. Drafts of a medical investigative research plan prepared by Dr. Gilman that reflects patient information are dated April 1 and September 5, 1999. Another document with patient information dates back to May 15, 2002, and doctor-patient communications continue from June 29, 2004. In addition, based on our review to date, the earliest date of a document that reflects attorney-client communications, attorney work product or marital communications is May 30, 2012.

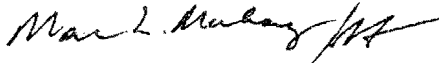
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In light of the foregoing, we respectfully request that Your Honor's Order to the University of Michigan encompass the time period of May 15, 2002 to November 2012, when Dr. Gilman retired from the University and returned its electronic devices to the University in accordance with its demand. We also understand that in approximately 2008 – and perhaps as late as 2010 and at other times since then – the University issued different electronic devices to Dr. Gilman and other University faculty. We also understand that in or since approximately 2008, the University implemented a new email system along with instructions on preserving historic email before the transition to the succeeding system. Materials relating to the University's issuance of the devices as well as policies and instructions regarding the systems and preservation of email are appropriate items for inclusion in Your Honor's Order. These materials also should assist the Court in determining Dr. Gilman's reasonable expectation of privacy in using the University's electronic system.

Respectfully submitted,

Bracewell & Giuliani LLP



Marc L. Mukasey

cc: Roberto Bracceras, Esq. (counsel for Defendant Mathew Martoma)
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